IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1144 of 2007

G.Eswari .. Petitioner

Vs.

1. The Commissioner of Police
   Chennai Police.

2. The Secretary to Government
   Government of Tamilnadu
   Home,Prohibition and Excise Department
   Fort St.George, Chennai-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

Writ of Habeas Corpus or any other order or direction in the nature of writ calling for the records of the first respondent in connection with Memo No.140/BDFGISSV/2007 dated 4.4.2007 and quash the same and to produce the detenu Gopi @ Gopinathan, son of Loganathan before this Hon'ble Court and set at liberty the detenu Gopi @ Gopinathan, now detained in Central Prison, Chennai under Act 14/82.

For Petitioner : Mr.R.Rajarathinam

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against the detenu - Gopi alias Gopinathan, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the first respondent in connection with Memo No.140/BDFGISSV/2007, dated 4.4.2007, to quash the same and to produce the detenu, now detained in Central Prison, Chennai under Tamil Nadu Act 14 of 1982, before this Court and to set him at liberty.

3.1. The order of detention dated 4.4.2007 was passed on the basis of ground case in Crime No.359 of 2007 for alleged commission of offences under Sections 341, 336, 397 and 506(2) IPC, complaint of which was lodged by one Balachandran. According to Balachandran, on 26.3.2007 at about 0830 hours, when he was proceeding at the junction of Railway Border Road and Sowrashtra Nagar 2nd Street by walk, the detenu, who was coming in the opposite direction, dashed against him and asked what is in his pocket, when the complainant replied there is nothing with him, the detenu took out a knife from his pant pocket and threatened to kill him. The detenu voluntarily inserted his hand into the shirt pocket of the complainant and took away Rs.120/-. The complainant raised hue and cry, and on hearing the same, the public as well as the police personnel, who were at the spot tried to apprehend the detenu. Noticing the same, the detenu threatened to kill them at the point of knife and further picked up stones from the roadside and pelted the same against them. The public who were at the spot noticed the atrocious activities and ran for safer places out of fear of danger to their lives. However, the police personnel with the help of public and complainant apprehended the detenu. Based on the complaint given by the complainant a case, as stated above, was registered.

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3.2. Apart from the above, the detaining authority also took note of the three adverse cases pending against the detenu, viz.,

i. Crime No.788 of 2004 registered on the file of Poonamallee Police Station for the offences punishable under Sections 147, 148, 363, 392, 384, 324 and 506(2) IPC with reference to the occurrence said to have taken place on 6.7.2004;

ii. Crime No.2262 of 2005 registered on the file of Aminjikarai Police Station for the offence punishable under Section 384 of IPC with reference to the occurrence said to have taken place on 7.7.2005; and

iii. Crime No.2240 of 2005 registered on the file of Choolaimedu Police Station for the offence punishable under Section 392 of IPC with reference to the occurrence said to have taken place on 7.7.2005.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to aintenance of public order, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main contention put forth by the learned counsel for the petitioner is that even before passing the detention order dated 4.4.2007, in the request for remand itself the sponsoring authority stated that the detenu is proposed to be detained under Tamil Nadu Act 14 of 1982 and the same only shows the pre-determination of mind on the part of the sponsoring authority.

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6. From a perusal of the records it is clear even at the stage of requisition for remand made on 27.3.2007 to the XVII Metropolitan Magistrate, Saidapet, Chennai, the Sponsoring authority had stated that the detenu is required for detention under Tamil Nadu Act 14 of 1982 and the same, in our considered opinion, would only show the pre-determination of mind on the part of the sponsoring authority. The detaining authority, while passing the order of detention, had failed to take notice of the

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predetermined averment made by the sponsoring authority. On this ground alone the Detention Order is liable to be set aside.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 4.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The Commissioner of Police
Chennai Police.

3.The Public Prosecutor
High Court, Madras.

4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Superintendent,
Central Prison,
Puzhal, Chennai.

VSV(CO)
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